

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT & LAND CASE NO. 23 OF 2013

LONYANGOLE NGURANYANGPLAINTIFF

VERSUS

ABRAHAM LONYANGAT DEFENDANT

J U D G M E N T

The Plaintiff Lonyangole Nguranyang brought this suit against Abraham Lonyangat claiming orders of eviction from Plot No. 167 within Kongelai Group Ranch in West Pokot. The Defendant who had been duly served with summons to enter appearance and file defence neither filed defence nor appeared for hearing during formal proof.

During the hearing, the Plaintiff Pw 1 Lonyangole Nguranyang testified that he is a member of Kongelai Group Ranch. He was allocated 50 acres within the ranch in 1974. The Plot No. is 167. The Defendant who is son of one of the group ranch members came and settled on his land despite the fact that his father had been allocated land elsewhere. The Plaintiff has had problems with the Defendant for a long time. Area elders have asked the Defendant to leave the Plaintiff's land in vain. The Defendant has even been charged before Kapenguria Court and convicted and jailed but he has refused to move out of the Plaintiff's land.

The Plaintiff called a witness Pw 2 Samuel Murio Lotiywo the Chairman of Kongelai Group Ranch. He produced a list of registered members of the Group Ranch (*exhibit 5*) which shows that the Plaintiff is member No. 167. The witness testified that the Defendant is son of one of the members of the Group Ranch. The Defendant's father has land within the Ranch where the Defendant is supposed to reside but he has instead stuck on to the Plaintiff's land. He testified that he has severally arbitrated on the dispute between the Plaintiff and the Defendant.

The Plaintiff produced a letter from the Chief's office Riwa Location (*exhibit 1*) confirming that he was allocated Plot No. 167/18. He also produced a verdict of elders (*exhibit 2*) on the dispute between him and the Defendant. The elders resolved that the land belonged to the Plaintiff. The Plaintiff also produced two letters dated 18/02/2007 and 13/01/2013 (*exhibit 3(a) and 3(b)*) from the Area Assistant Chief and Chief respectively touching on the dispute. The Plaintiff also produced another letter dated 19th July, 2007 (*exhibit 4*) which shows that the Plaintiff and the Defendant had a dispute which was arbitrated by the District Land and Adjudication & Settlement office Kapenguria. The dispute was resolved in favour of the Plaintiff. The Defendant was given 40 days to move from the Plaintiff's land but he never complied. He did not even appeal from the decision. The Defendant was later charged for forcible detainer. He was found guilty, was convicted and imprisoned for six months. The proceeding of Kapenguria Principal Magistrate's Court were produced as *exhibit 6*.

The Plaintiff's evidence remains uncontroverted. The Plaintiff's evidence has demonstrated that he is the owner of the suit land. He has made every effort to have the Defendant leave the land in vain. He has now come to Court seeking eviction orders. I find that the Plaintiff has proved his case on a balance of probabilities. An order of eviction against the Defendant is hereby issued. The Defendant is given three months to voluntarily move but if he does not do so within three months, he should be forcefully evicted from the land. The Defendant shall pay the costs of this suit to the Plaintiff.

Dated, signed and delivered in Open Court on this 26th day of August, 2013.

E. OBAGA

JUDGE

In the presence of M/S Arunga for Plaintiff.

Court Clerk: Lobolia.

E. OBAGA

JUDGE

26/08/2013